

New York City Capital Process Reform Task Force

2022 Year-end Report

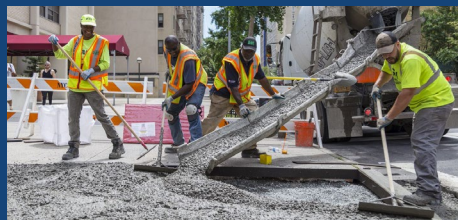
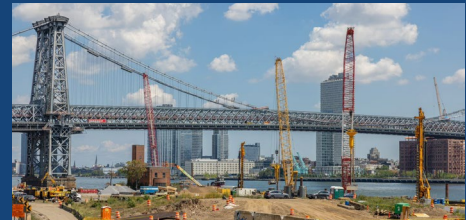


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Letters from Mayor Eric L. Adams and First Deputy Mayor Lorraine Grillo



Dear New Yorkers,

Our public infrastructure is everywhere—it is the pipes that bring us water, the sidewalks we walk on, the roads our buses traverse, the schools our children attend.

Despite how foundational it is to our city, for far too long we have accepted that buildings will get built eventually, that roads will get repaired at some point, that curbs will be made accessible later. But the costs of building slowly are just too high, and those costs are borne by all tax-paying New Yorkers, including those who rely on public infrastructure the most: older New Yorkers whose social support comes from a senior center, younger New Yorkers whose sense of self comes from a soccer field or a library or a dance studio, essential workers who deserve high-quality EMS stations and sanitation garages and medical facilities. We can no longer accept that the way we have been building public space suffices. This effort is about excellence in government – giving New Yorkers a return on their investment with a quality product – as well as fiscal prudence; the proverbial economic storm clouds forming demand that we find a better way to deliver our capital projects.

With First Deputy Mayor Lorraine Grillo, and with the support of Comptroller Brad Lander, I convened the Capital Process Reform Task Force to review our current capital process and recommend ways to build that will save taxpayer money, produce results faster, bolster opportunities for small firms and diverse New Yorkers, and increase the City's capacity to address emerging needs. I convened this Task Force early in my administration so we could use the years ahead to overhaul the capital process based on the recommendations in this report and to continue bringing our partners together to pursue additional reforms. We are excited to dig in.

I am grateful to those who lent their time and expertise to this effort, who worked to develop the 39 recommendations in this report that together will transform our capital process. Thank you to the labor leaders, M/WBE community, industry experts, City Hall teams, City agencies, Comptroller Brad Lander, and of course, First Deputy Mayor Lorraine Grillo, whose expertise in capital project delivery made her the perfect person to lead this work. I look forward to working both internally and with colleagues in Albany to enact these recommendations, which will ultimately cut years off project timelines and get New Yorkers the public spaces they deserve faster, better, cheaper.

Sincerely,

A handwritten signature in black ink that reads "Eric Adams". The signature is fluid and cursive, with the first name "Eric" and last name "Adams" clearly distinguishable.

Mayor Eric L. Adams



Dear New Yorkers,

I am grateful that Mayor Adams gave me the opportunity to convene the Capital Process Reform Task Force. I have spent my career building public assets, and leading a serious reform effort as First Deputy Mayor was a fitting capstone to my public service immersed in this important work.

I know first-hand how difficult this work is. Delivering public assets on time is tough -- the regulatory regime is complex, City processes are bureaucratic, and the work at the heart of it all is physically demanding. But I also knew, when Mayor Adams entrusted me with leading this Task

Force, who we would need at the table in order to take on our arcane capital process and reform it from the inside out.

When I was commissioner of the Department of Design and Construction (DDC), I developed the agency's first-ever strategic blueprint outlining reforms to deliver public works projects in a more efficient and cost-effective manner. With the intrepid efforts of dedicated DDC employees, we achieved tremendous reforms inside the agency with the tools we had at the time. With the Capital Process Reform Task Force, we not only have the best minds in the business to prescribe what we need to take it to the next level, but also a coalition that has the capability and the capacity to work with all levels of government to ensure that the ideas advanced become reality. The recommendations in this report are not changes that only one segment of the industry wants nor are they theoretical ideas that are impractical in the field or won't have the political will to be achieved—instead, the recommendations in this report represent consensus from the diverse set of leaders necessary to truly overhaul the capital process.

I am grateful to each and every member of this Task Force for supporting the City's capital work by volunteering their time and sharing their expertise. I am also thankful for the support of Deputy Mayors Meera Joshi and Maria Torres-Springer and their teams, the hard work of all of the dedicated employees from the city's agencies, and Comptroller Lander and his team who have been willing to take a fresh look at longstanding policies with an eye towards reform. Finally, the product of this Task Force would not have been possible without the team at the Mayor's Office of Policy and Planning – Sherif Soliman, Ann Cheng, and Fatumata Tunkara. I cannot thank them enough for their fantastic stewardship of the Task Force, and I know that even more quality work lies ahead as the Task Force continues its work.

The mantra of the Adams Administration is "Get Stuff Done," and as I prepare to leave public service after building public projects for 29 years, I am confident that this roadmap for reforming the capital process will get done.

Sincerely,

First Deputy Mayor Lorraine Grillo

Task Force Members

- **Richard Browne**, Managing Partner, Sterling Project Development Group
- **Michael A. Capasso**, CEO & President, C.A.C. Industries, Inc.
- **Ali Chaudhry**, Senior Vice President and Chief of Development and Government Relations, AECOM
- **Louis Coletti**, President and CEO, Building Trades Employers' Association
- **Raquel Diaz**, Public Sector Area Manager, Gilbane Building Company
- **Reverend Jacques Andre DeGraff**, Chair, MBE Leadership Summit
- **John T. Evers**, President and CEO, American Council of Engineering Companies of New York
- **Alaina Gilligo**, Head of Strategic Partnerships, Gilbane Building Company
- **Shari C. Hyman**, Vice President, Public Affairs, Turner Construction Company
- **Gary LaBarbera**, President, Building and Construction Trades Council of Greater New York
- **Sam Padilla**, President, Padilla Construction Services, Inc.
- **Taylor Palmer**, Government Relations Manager, American Council of Engineering Companies of New York
- **Nayan Parikh**, President, New York Tri-State Chapter of National Association of Minority Contractors
- **Benjamin Prosky**, Executive Director, American Institute of Architects New York Chapter and The Center for Architecture
- **Arthur Rubinstein**, President, Skyline Steel Corp. and Chair, Subcontractors Trade Association Legislative Committee
- **Gus Sanoulis**, Vice President of Construction, Con Edison
- **Dan Sawh**, Owner and President, Haydan Consultants Inc.
- **Dan Symon**, Associate Partner, Gartner; Former MOCS Director
- **Robert G. Wessels**, Executive Director, The General Contractors Association of New York

New York City Comptroller's Office

New York City Agencies and Offices

- Mayor's Office of Contract Services (MOCS)
- Department of Design and Construction (DDC)
- Economic Development Corporation (EDC)
- Mayor's Office of Efficiency
- Department of Environmental Protection (DEP)
- Housing Authority (NYCHA)
- Law Department
- Office of Management and Budget (OMB)
- Mayor's Office of Operations
- Department of Parks and Recreation (DPR)
- Mayor's Office of Risk Management and Compliance
- School Construction Authority (SCA)
- Department of Transportation (DOT)

The Mayor's Office of Policy and Planning is the lead office in coordinating all activities of the Task Force.



New York City
Law Department



Executive Summary



Mayor Adams convened the Capital Process Reform Task Force in April 2022 to undertake a comprehensive review of the City’s capital process with the goal of developing recommendations to reform capital project delivery. Under the leadership of First Deputy Mayor Lorraine Grillo and with the enthusiastic support of Comptroller Brad Lander, the Task Force released a set of 17 initial recommendations in October and is releasing here an additional 22 recommendations. Taken together, these recommendations will cut years off capital project delivery.

The Task Force’s mandate was fourfold: reduce timelines for capital project completion, achieve taxpayer savings, enhance participation and inclusion in the process, and increase the City’s capacity to address emerging needs. The Task Force organized its work around six working groups, each focused on a different component of the capital process:

Improve the Project Pipeline:	The working group tasked with improving the project pipeline focused on how City agencies might better prepare for advancing specific projects by properly defining project scope, ascertaining the status of site conditions at project locations, and compiling better asset condition information.
Reform Procurement:	The working group tasked with reforming procurement identified ways to amend procurement laws, directives and regulations to speed up projects without sacrificing quality or appropriate oversight. The working group also explored extending additional alternative project delivery methods to the City’s toolkit consistent with those used by other governmental entities.
Streamline Approvals:	The working group tasked with streamlining approvals looked for efficiencies within City processes, especially in the areas of project initiation and change orders.
Grow the Number of New Yorkers who can Participate:	The working group tasked with growing the number of New Yorkers involved in the City’s capital process looked at ways the City can increase Minority- and Women-owned Business Enterprises (M/WBE) participation by minimizing barriers to entry and investing in M/WBE capacity and looked at the unique issues faced by subcontractors and how the City might address them.
Manage Projects More Effectively:	The working group tasked with managing projects more effectively sought to expand existing successful pilots that have accelerated completion of projects at reduced costs and develop new ways to improve how agencies can more strategically deliver projects.
Performance Management and Public Reporting:	The Performance Management and Public Reporting working group focused on developing a Capital Project Tracker as mandated by Local Law 37 of 2020, which was spearheaded by current Comptroller Brad Lander when he was a Council Member.



The working groups met between monthly Task Force meetings to generate ideas and to vet ideas submitted by City agencies and other stakeholders. From the working group meetings came draft recommendations, which were then brought to the Task Force for additional discussion and ultimate approval. The recommendations in this report reflect thorough engagement and careful negotiation with the many parties involved in the capital process.

Because much of the power to regulate procurement and capital projects lies with the State, the Task Force is releasing here a package of nine State legislative proposals. The Task Force will work together throughout the 2023 legislative session to champion this set of bills and looks forward to working with the Governor and State legislature to modernize the set of regulations governing the City's capital process. The Task Force and administration officials will also work closely with the City Council on advocating for these State legislative proposals, local legislation that seeks to enhance the capital process, and on the progress of implementing internal reforms.

In addition to the nine State legislative recommendations, this report details 30 internal reforms—12 that were in the initial report and 18 that are new here. These items are within the City's control and will significantly improve capital project delivery.

The internal reform recommendations were the culmination of a detailed agency review of existing processes, methods, and policies for each step of the capital process. In many instances, the analysis focused on agency interactions with oversight agencies on mandated processes such



as the Certificate to Proceed process, but it also focused on agency interactions with the industry, especially on change orders. Task Force members were particularly focused on reducing approval timelines for these steps and recommended service level agreements in a few key areas that have traditionally lagged.

Another key focus of the Task Force was addressing many shortcomings in the change order process. The main goal was to minimize the need for change orders and recommendations such as enhancing a proven tool like the Expanded Work Allowance were identified as an effective mechanism to achieve that goal. Recognizing that change orders are inevitable, however, the Task Force zeroed in on speeding up a process that could take several months to complete and facilitating faster payment for vendors as the process progresses. As a result, recommendations that address agency timelines to proceed with change order requests, ensure invoicing is more efficient, and speed up authorizations to issue payment were advanced.

Looking forward, the Task Force will continue to convene to coordinate legislative strategy, implement the internal reforms, and facilitate discussions regarding additional reforms including, but not limited to, potential updates to Comptroller Directive 7 and other local laws and regulations, internal project management improvements, more expansive documentation of asset conditions, additional strategies to assist libraries and cultural institutions with their capital needs, and the closeout and final time extension processes.

Task Force Recommendations At-A-Glance

State Legislative Agenda: Nine Recommendations

Procurement	<p>Allow the City to require electronic bids</p> <p>Allow the City's Procurement Policy Board to update the public hearing threshold and allow for public notice</p>
M/WBEs	<p>Increase M/WBE small purchase threshold from \$1M to \$1.5M</p> <p>Allow M/WBE mentorship programs at all agencies*</p>
Alternative delivery	<p>Allow agencies to use one-step progressive design-build</p> <p>Establish DDC as an Authority*</p> <p>Allow agencies to use Construction Manager-Build and Construction Manager-at-Risk</p>
Insurance	<p>Create a New York State Insurance Fund pilot program to provide an additional insurance option for M/WBEs and small contractors*</p> <p>Allow the City to use Owner-Controlled Insurance Programs and Contractor-Controlled Insurance Programs*</p>

Internal Reform Agenda: 30 Recommendations

Scoping and planning	<p>Double the number of projects that use Capital Project Scope Development fund</p> <p>Host Capital Project Coordination Expos to coordinate with elected officials on projects that may receive discretionary funding</p>
Project initiation	<p>Create a template and establish standard response times for the Certificate to Proceed process</p> <p>Revise Comptroller's Directive 10 to update interpretations of capital eligibility in limited scenarios where warranted*</p> <p>Create new Capital Approval Standards to streamline the Certificate to Proceed Process with project types known to be capitally eligible*</p> <p>Reset existing Capital Approval Standards thresholds and update all Capital Approval Standards every other year based on industry-standard construction cost indices*</p>
Procurement	<p>Request a five-fold increase to Financial Control Board contract review thresholds based on growth in the City's budget</p> <p>Repeal EO102 of 2007 that includes redundant steps to verify payment of prevailing wages*</p> <p>Revise EO50 implementation so compliance with EEO is verified with a single submission by a vendor, rather than multiple submissions for each contract held by the vendor *</p>

M/WBEs and small contractors	<p>Host Project Labor Agreement educational sessions</p> <p>Create a future projects and procurement document database</p> <p>Ensure M/WBE pre-qualified lists are developed at all agencies*</p>
Project management tools to improve speed, cost, and quality	<p>Utilize Early Construction Completion Incentives</p> <p>Identify an ombudsperson at each capital agency so contractors and subcontractors can obtain information or resolve disputes</p> <p>Utilize price adjustments for Fuel, Steel, Asphalt</p> <p>Institute engineering reviews to optimize cost effectiveness</p> <p>Coordinate closely with utilities</p> <p>Enhance mobilization payment*</p>
Change orders	<p>Expand Expanded Work Allowance for unforeseen field conditions from DDC pilot to all agencies</p> <p>Expand categories included in Expanded Work Allowance*</p> <p>Include Expanded Work Allowance on Capital Approval Standards*</p> <p>Use Expanded Work Allowance on professional service contracts in limited circumstances*</p> <p>Create service level agreements governing change orders*</p> <p>More efficient processing of certain non-Expanded Work Allowance change orders*</p>
Invoicing and payment	<p>Streamline and standardize invoice checklists*</p> <p>Track invoices from date of draft invoice to final approved invoice*</p> <p>Pilot tying payment commitment to date of draft invoice*</p>
Libraries and Cultural Institutions	<p>Support libraries and cultural institutions with advanced capital planning*</p> <p>Pilot program for self-management of small projects*</p> <p>Shorten timeline for equipment purchases*</p>
Performance management and public reporting	<p>Implement Local Law 37 Capital Project Tracker</p>

* New recommendation not included in initial recommendations

State Legislative Agenda



The Capital Process Reform Task Force will champion the following nine legislative proposals in the 2023 State Legislative Session. Five of the nine proposals were part of the initial recommendations announced in October and four new proposals are recommended by the Task Force in this report.

Procurement

Changing State law to modernize and speed up procurement is essential to moving the City's capital process faster. In the initial report, the Capital Process Reform Task Force announced two procurement reforms: Electronic bidding and the Public Hearing Threshold. Both reforms bring outdated procurement laws into the 21st century.

#1: Electronic Bidding

Currently, construction contractors must submit paper bids when they compete for City projects. The Task Force will champion electronic bidding, which will make the procurement process more efficient for both contractors and City agencies and cut two days per bid in agency processing time.

#2: Public Hearing Threshold

Currently, public hearings are required on procurements above \$100,000 and add about three weeks to the procurement process for each contract undergoing a public hearing. The Task Force will ask the State legislature to give the City's Procurement Policy Board the ability to change the public hearing threshold and allow for public notice, rather than public hearings, for contracts above the threshold.



M/WBEs

In the initial report, the Task Force announced support for increasing the M/WBE small purchase threshold to establish parity with other New York public entities. The Task Force is recommending a new legislative proposal to expand SCA and DDC's successful mentorship model to all City agencies.

#3: M/WBE Small Purchase Threshold

In the 2022 legislative session, the Governor and State legislature enacted an increase to the M/WBE small purchase threshold for City contracts, raising it from \$500,000 to \$1M. The Task Force is advancing a State legislative proposal to increase this threshold to \$1.5M, consistent with the threshold for other public entities such as the Metropolitan Transportation Authority (MTA).

#4: Expand Mentorship Programs to all City agencies (New Recommendation)

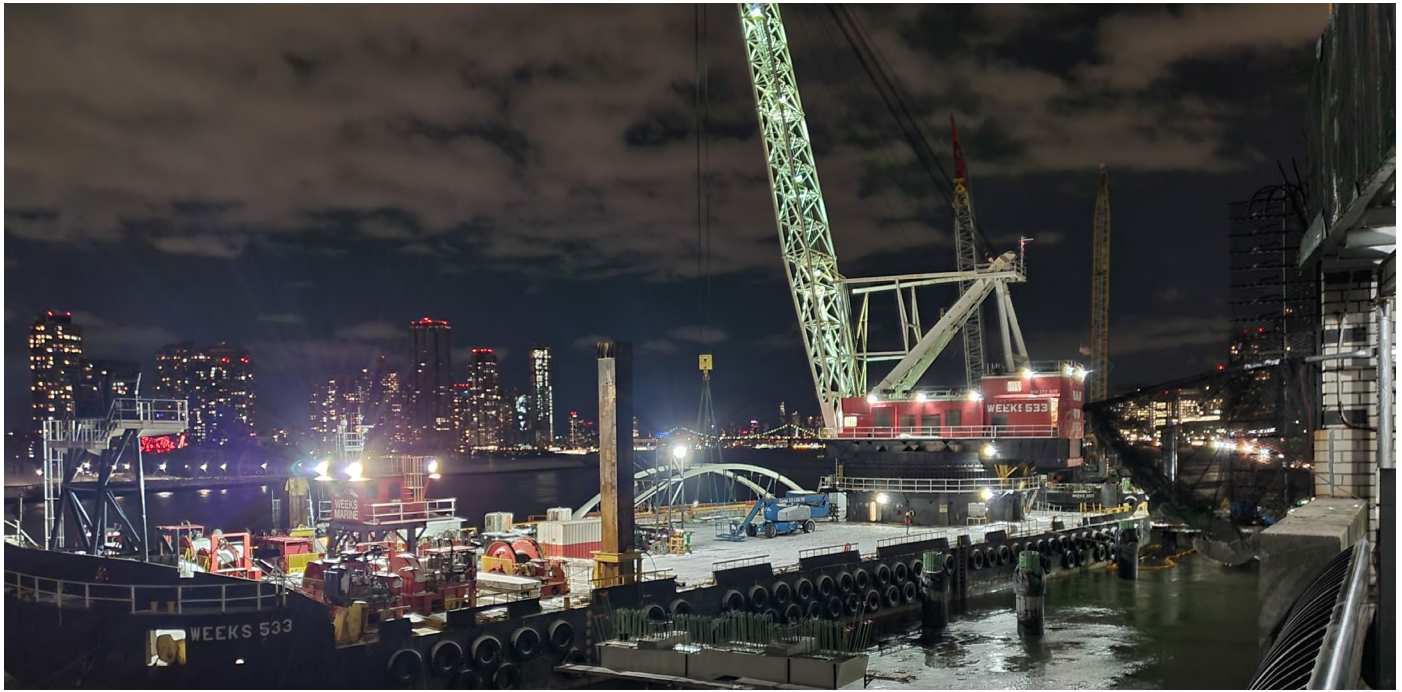
- **Issue:** M/WBEs have historically faced barriers to entry when competing for City jobs. Some agencies have successful models regarding how to support M/WBEs in building the capacity to compete for and successfully deliver City projects, but most agencies do not have the ability under State law to replicate those models.
- **Recommendation:** Champion legislation to expand mentorship programs to all City agencies. SCA and DDC both have M/WBE mentorship programs that provide training, networking, and bidding opportunities to support and increase business opportunities for M/WBEs. Through these programs, M/WBEs get project-specific assistance, access to industry events, tailored business management and growth planning support, and exclusive opportunities to bid on specially designated projects up to \$1.5M and up to \$3M for M/WBEs in the graduate mentorship program. In City Fiscal Year (FY) 2022, SCA awarded over \$100M through their mentorship program, which has 158 firms, 61% of which won prime contracts. DDC's mentorship program, which was authorized in 2019, is currently up and running with the first cohort of 50 firms who are bidding on mentorship program projects. DDC will begin recruiting its second cohort in January 2023.

Alternative Delivery

When procuring and delivering construction projects, State law requires the City to follow a design-bid-build process and award the job to the lowest responsible bidder, with limited exceptions. This low bid requirement is problematic in a few ways.

First, the City does two procurements: one for design, and then one for construction after design is finished. Because design must be completed before construction can be bid out, the design has to be finished without input from the people who will build the project and have expertise in building projects. Additionally, the low bid requirement creates contentious relationships from the outset between the City and bidders and between designer and builder.





Design-build authority for the City, which was enacted in 2019 and extended in 2022, eliminates the two procurements required under design-bid-build and brings the designer and builder together, creating a single point of responsibility and emphasizing quality in addition to price. Design-build is a single procurement with two steps: a Request for Qualifications (RFQ) that produces a shortlist followed by a Request for Proposals (RFP). It is anticipated that design-build will cut years off the typical design-bid-build project. However, while a very important tool, two-step design-build is far from the only tool in the procurement toolbox, and the Task Force will advocate for three pieces of legislation (two of which are initial recommendations and one new recommendation) in Albany that, if passed, will transform the City's ability to deliver projects.

#5: Progressive Design-build

The current two-step design build is well-suited for new construction and other projects with relatively defined project requirements and site conditions, but not for renovation or complex infrastructure when the exact conditions cannot be detailed thoroughly enough in an RFP for design-builders to make a building price commitment as part of their proposal. The Task Force will advocate for authorization to use progressive design-build, a one-step procurement process that will allow the City to quickly select a team based on qualifications and collaborate throughout the essential early phases of design, expanding the range of projects that can be delivered using design-build.

#6: Construction Manager-Build and Construction Manager-at-Risk

CM-Build and CM-at-Risk, delivery models that are currently only permitted during an emergency, allow the City to bring on the construction manager early in the process, using quality-based selection, to collaborate with the designer as part of an integrated project delivery team. The Task Force will advocate for State legislation to allow the City to use CM-Build and CM-at-Risk during non-emergency times, just as the federal government, the Army Corps of Engineers, and the private sector do regularly, and as NYCHA will begin to do under State legislation enacted in 2022 to establish a NYCHA Trust. During the COVID emergency, when the City was able to use CM-Build and

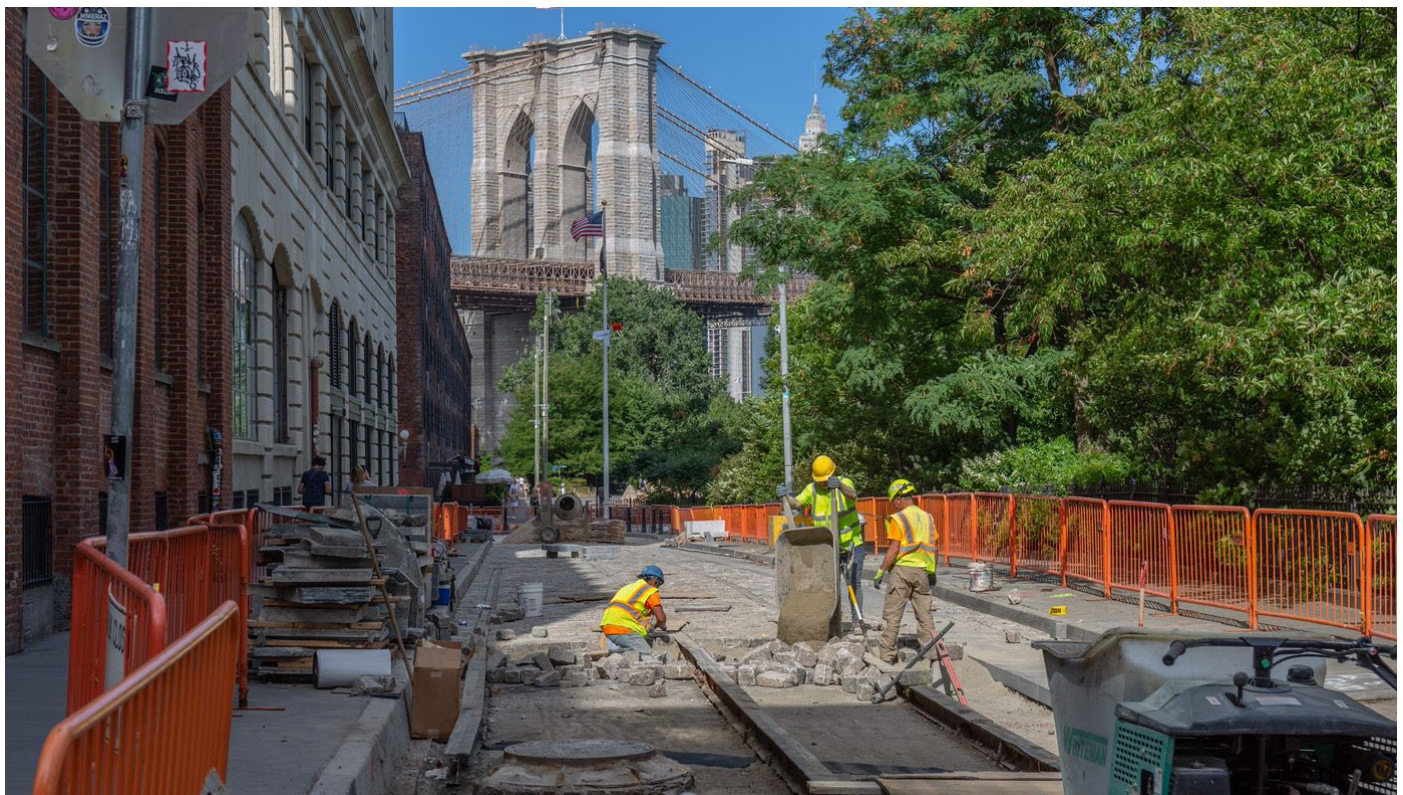
CM-at-Risk, DDC built testing sites in an average of seven days with 55% M/WBE utilization and built three permanent healthcare facilities in an average of 192 days with 46% M/WBE utilization.

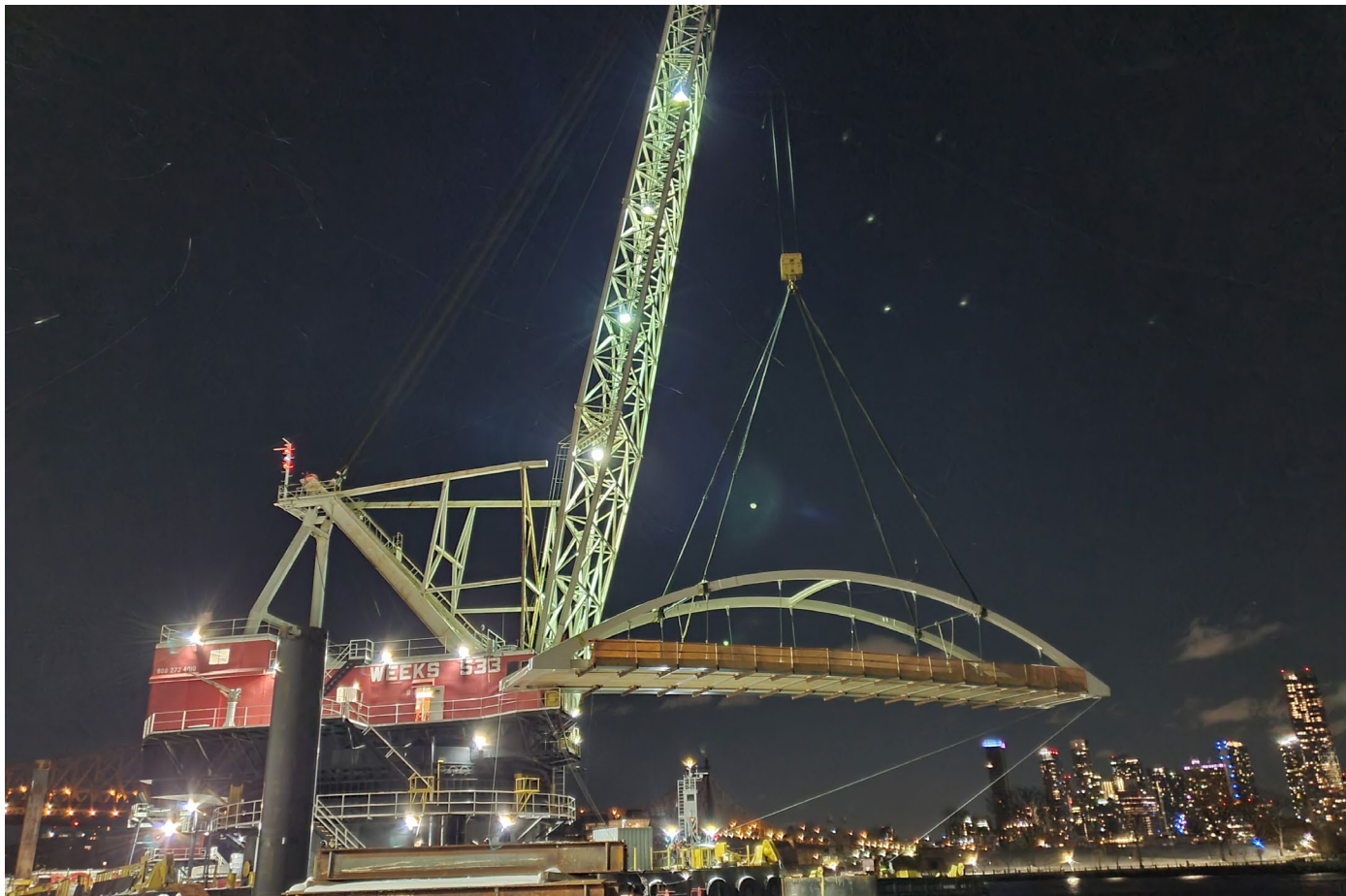
#7: DDC as an Authority (New Recommendation)

- **Issue:** Even with the alternative delivery tools outlined above, DDC's existence as a City agency constrains its ability to deliver projects quickly. DDC needs additional tools to continue equipping the City to meet resiliency and sustainability challenges and maintain aged infrastructure.
- **Recommendation:** Pursue State legislation to create a DDC Authority (DDC+) which would eliminate many of the administrative challenges faced by City agencies. As an authority, DDC+ will have reduced administrative burdens, fewer redundant oversight steps during procurement and contract administration, and wide access to alternative project delivery. DDC+ will no longer be subject to prescriptive local procurement regulations that have not kept pace with the needs of the City's varied, critically important capital portfolio. Removing DDC from regulations issued by the Procurement Policy Board and other processes will allow the new authority to streamline and accelerate project delivery. As a public authority, DDC will be subject to audits and reporting requirements to ensure transparency and accountability.

Insurance

M/WBEs and small contractors often struggle to find insurance options that meet the standards required for City projects, and they particularly struggle to obtain insurance options that are affordable. Lack of affordable insurance makes M/WBEs and small contractors less competitive as prime contractors and subcontractors. The Task Force will advocate for State legislation that makes it easier for firms to procure affordable insurance and that minimizes barriers to entry for working on City projects.





#8: New York Small Contractors Relief Act (New Recommendation)

- **Issue:** The market for insurance for small contractors is characterized by both high insurance rates and lack of market capacity. These two features of the market are especially acute for M/WBEs who are more likely to be smaller, newer, and encounter more barriers to entry for working on City projects than large firms.
- **Recommendation:** Pursue State legislation to create a pilot program in which the New York State Insurance Fund will provide an additional insurance option for contractors. Contractors will have to qualify and purchase insurance, just like on the private market, but this new option will be more available and affordable than current private options. The pilot will be open to small contractors with less than \$3M in gross revenue the previous year and State- or City-certified M/WBEs of any size.

#9: Owner-Controlled Insurance Programs and Contractor-Controlled Insurance Programs (OCIP and CCIP) (New Recommendation)

- **Issue:** Each contractor and subcontractor on a City capital project must purchase their own project-specific insurance, which leads to high costs for contractors and therefore, indirectly, for the City. Because in the current situation bids have to include the cost of insurance, the City cannot evaluate bids based on the merit of their materials and labor and instead must take lowest bidders inclusive of insurance costs. Additionally, there is significant time and cost in determining, for any given incident that arises on a project, which of the many insurance companies will cover it. Finally, the City must ensure that each contractor maintains their coverage if the project runs longer than the length of the project and straddles more than one calendar year.

- **Recommendation:** Pursue State legislation to allow City agencies to use wrap-up insurance programs like OCIPs and CCIPs, just as the SCA, the Port Authority, and MTA already do. In an OCIP, a single policy held by the owner covers the owner and contractors for the entire project or group of projects. Under a CCIP, the insurance program is held by the construction manager or general contractor. In both situations, because insurance prices are not factored into bids, M/WBEs and small contractors have greater access to projects because they can bid on the work without facing prohibitively high insurance costs that, without an OCIP or CCIP, are necessarily reflected in their bids.

New Recommendations for Internal Reform Agenda



In addition to pushing for reforms at the State level, the Task Force scrutinized the City's internal processes and developed 30 recommendations. Of these 30 recommendations, 18 are new and they are outlined in this section. The 12 initial internal reform recommendations are listed in the appendix.

Project initiation

The City relies on bond proceeds to finance capital projects. Maintaining the City's bond rating and capital market access requires that bond proceeds be spent only on eligible capital projects, in alignment with Generally Accepted Accounting Principles. State law and the City Charter prohibit the use of bond proceeds to finance costs that do not result in a new capital asset under Generally Accepted Accounting Principles. The Comptroller's Directive 10 interprets Generally Accepted Accounting Principles for New York City. In turn, during the Certificate to Proceed (CP) process, OMB reviews and confirms the capital eligibility of every project before funding is authorized and work can proceed. The Task Force is putting forth three new recommendations to improve the process, while respecting legal requirements and accounting standards.





#1: Comptroller Directive 10 revisions

- **Issue:** The Comptroller's Directive 10 governs the way that Generally Accepted Accounting Principles apply to New York City capital projects. Agencies pinpointed recent scenarios that yield frequent questions and warrant tweaks to Directive 10, and the Task Force believes that updating and clarifying certain parts of Directive 10 will streamline the capital project approval process.
- **Recommendation:** The Task Force recommends the following changes to Comptroller Directive 10:

Increase the radius for combining work to meet minimum cost requirements from two blocks to a quarter or half a mile for pedestrian ramps, sidewalks damaged by tree roots, and green/gray infrastructure including bioswales and catch basins.

Extend eligible time frames surrounding substantial completion from six months to 18 months for work required to pass agency inspections and from six months to a time period to be determined for work of employees managing capially eligible construction involved in final completion.

Allow capitalization of additional quantities of eligible equipment to ensure continuity of operations, taking into account regular maintenance needs.

Allow tree guards to be capially eligible on their own as an improvement, subject to the same radius/thresholds as tree planting and sidewalk work. Treat tree planting within parks like street tree planting for capital eligibility purposes. Fund in-house crews to plant trees procured through capital contracts.

Expand scenarios where renovations to different areas of an asset may be combined for purposes of meeting minimum capital cost requirements.

Update Directive 10 Frequently Asked Questions to address split HVAC systems.

Issue additional guidance clarifying eligibility for non-contiguous window replacements.

#2: New Capital Approval Standards

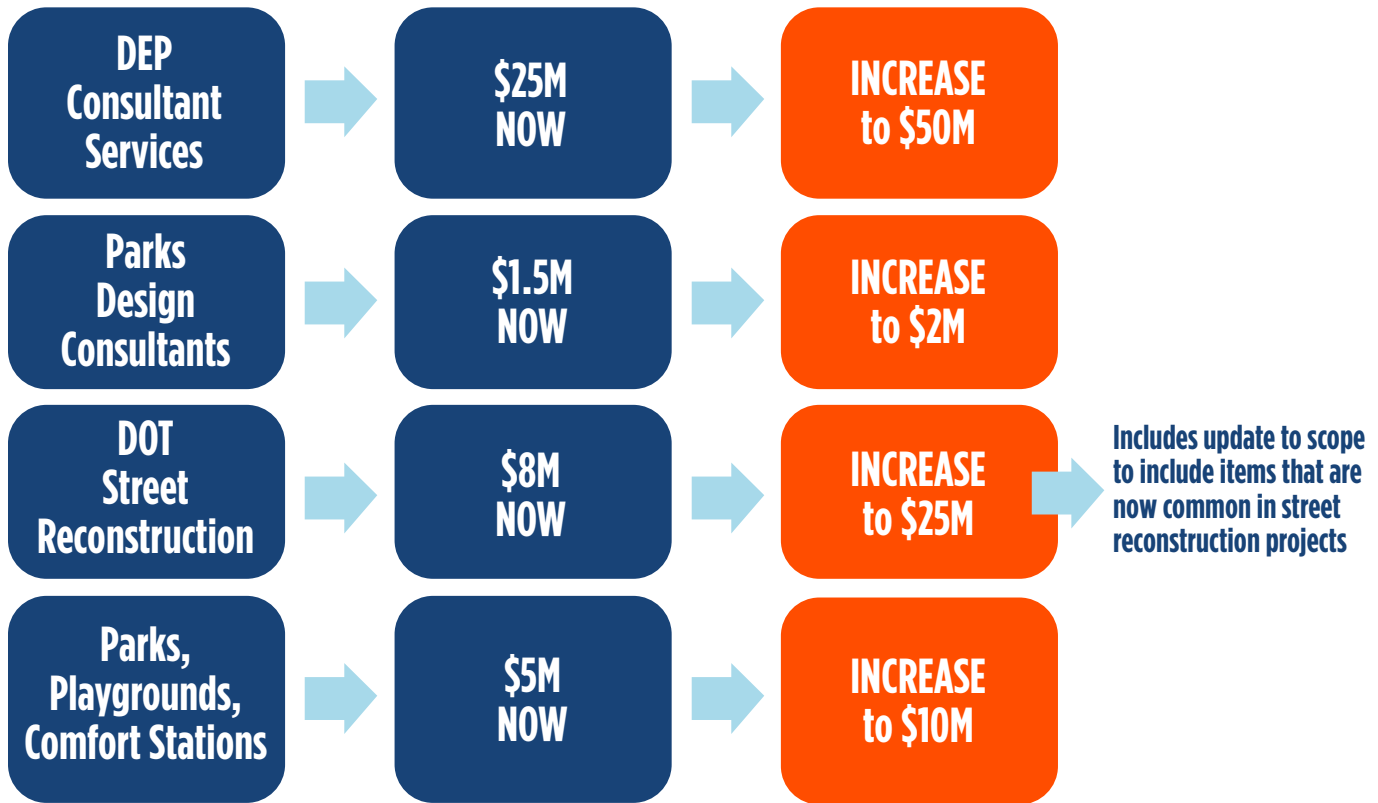
- **Issue:** Capital Approval Standards are pre-discussed CPs for certain capital eligible, frequently occurring agency projects. Capital Approval Standards cut down agency prep time, minimize back-and-forth between agencies and OMB about capital eligibility, and allow pre-registration steps to move in parallel. However, Capital Approval Standards are limited to only a few types of projects such as street reconstruction, playgrounds, and comfort stations.
- **Recommendation:** Create new Capital Approval Standards for green infrastructure, pedestrian ramps, traffic signals, incidental and ancillary bridge work, and roadway markings. Capital Approval Standards move two to four weeks faster than the regular two- to three-month CP process.



#3: Reset existing Capital Approval Standards thresholds and commit to updating every other year using industry-standard construction cost indices

- **Issue:** Existing Capital Approval Standards have thresholds set years ago which need to be updated to reflect current cost and scope.

- **Recommendation:** The Task Force recommends increasing existing thresholds as detailed below.



OMB and agencies will adjust Capital Approval Standards thresholds every other year based on industry-standard construction cost indices that track construction costs over time.

Procurement

Although much of the authority to regulate procurement lies with the State, there are also actions within the City's purview that affect procurement. The Task Force recommends that the City implement two new recommendations to improve the procurement regulatory regime.

#4: Repeal of Executive Order 102 of 2007 (EO102)

- **Issue:** New York City is committed to having a strong network of safeguards to ensure that prevailing wages are paid to the hardworking tradespeople that build public works. The current process for ensuring that all required prevailing wages are paid is outdated and contains redundancies that add weeks, or in some cases months, to the procurement process without adding value. EO102 requires that lowest bidders whose bids are within a certain percentage or dollar amount under the next lowest bidder submit prevailing wage documents in the pre-award phase. Since the EO's implementation in 2007, the City has put in place a number of stronger and faster checks for prevailing wage, rendering EO102 redundant and inefficient. The City's Standard Construction Contract includes extensive language for prevailing wage enforcement and like the EO, requires that all contractors and subcontractors provide significant documentation of wage compliance. Agencies are also required to check for prevailing wage compliance when reviewing

bids. Additionally, starting in 2009 the City has entered into Project Labor Agreements with the Building and Construction Trades Council, which provide an additional layer of wage compliance. EO102 adds months to procurement for firms new to the City and weeks to procurement for firms who regularly work with the City.

- **Recommendation:** Repeal EO102, noting the City's other numerous checks for prevailing wage compliance.

#5: Revise Small Business Services (SBS) Division of Labor Services Employment Reviews originating in Executive Order 50 of 1980

- **Issue:** New York City is committed to ensuring that contractors are equal employment employers, but current implementation of Executive Order 50 addressing this includes redundant steps. Executive Order 50 and the SBS Division of Labor Services review require a check each time a contractor is awarded a City contract, even if that contractor has recently gone through the process for another contract.
- **Recommendation:** Initiate a City rulemaking process to change the SBS Division of Labor Services implementation of Executive Order 50 to by-vendor rather than by-contract and create a certification that lasts for three years. By doing this, the City will still conduct important checks to ensure that City contractors do not have discriminatory hiring processes but will not unnecessarily burden contractors and City employees by repeating the process over and over again in short periods of time. Revising EO50 rules will save an average of 15 days per contract for vendors that have been certified within the last three years.

M/WBEs

The Task Force's initial M/WBE recommendations for internal reforms focused on giving M/WBEs and small contractors increased access to information and key personnel in City agencies, and its new M/WBE recommendation focuses on a particular tool that has been successful at increasing M/WBE participation.

#6: Require M/WBE pre-qualified lists

- **Issue:** While the M/WBE small purchase threshold facilitates M/WBE participation on projects below \$1M, M/WBEs often struggle to access City projects over the threshold and have fewer opportunities to bid as prime contractors than they do as subcontractors.
- **Recommendation:** State law allows agencies to create exclusive bidding opportunities for M/WBEs on a pre-qualified list, so long as the list is created for a specific type of work. Bidding on that type of work is then limited to M/WBEs on the pre-qualified list and ensures that all bidders are qualified to do the type of work, which can reduce procurement delays later in the process. Vendors still go through procurement process including all oversight steps.

Project management tools to improve speed, cost, and quality

The Task Force looked at tools to ensure that once a project is underway, there is continuity of construction. A number of tools noted in the initial report, many piloted at DDC and expanded to the other capital agencies by the Task Force, allow agencies to manage projects faster and cheaper while getting better results. The Task Force built upon the initial recommendations with a new solution that will ensure contractors have what they need at the beginning of a project.

#7: Enhanced Mobilization Payment

- **Issue:** Navigating City processes can be difficult, and the upfront costs of doing business with the City are significant. These challenges limit the pool of contractors that bid on City projects and lead to cashflow challenges when significant change orders arise.
- **Recommendation:** Enhance the current mobilization payment, which is tied to specific items in the contract, to include an additional one-time upfront payment of 1% of contract value to facilitate project initiation and ensure the continuity of construction.





Change orders

City change orders are a significant pain point in the capital process. In addition to the work required to identify and construct the change, the City process includes negotiations between the agency and contractor to agree on the scope and cost, authorization to use additional money and, in some cases, an amended CP from OMB and registration with the Comptroller—a process that can total six to 12 months.

The current change order process is challenging for the City because of the delays and the costs inherent in those delays, and the current change order process is challenging for contractors because they get paid several months after the completion of work.

The Task Force examined the change order process in detail and in the initial report recommended beginning to address change orders by finding ways to avoid needing them, and one of those ways is through Expanded Work Allowance.

Expanded Work Allowance is an allowance for agreed-upon change orders that is budgeted and registered with the Comptroller at the project start. When agencies use Expanded Work Allowance, rather than doing the change order steps described above, they can pay for completed work up to 80% before negotiation is finalized. This allows contractors to get paid much faster—an average of 33 days rather than 182 days, according to data from DDC's successful pilot using Expanded Work Allowance on unforeseen field conditions. The recommendations below, along with the initial recommendation to expand DDC's unforeseen field conditions Expanded Work Allowance pilot, will both decrease the number of change orders and improve the process for those remaining.

#8: Expanded Work Allowance for additional change order categories

- **Issue:** Expanded Work Allowance is limited only to change orders to address unforeseen field conditions. All other change orders remain in the current inefficient change order process.
- **Recommendation:** Expand use of Expanded Work Allowance on new construction projects, projects in which the asset is undergoing a comprehensive betterment (complete renovation), and work within an area undergoing a comprehensive betterment, to include the following change orders:

- **Non-material scope changes**

Changes as a result of newly available technology (e.g., installing a more energy-efficient HVAC or lighting system than what was originally specified)

Other safety enhancements not regulated or beyond code/legal requirements (e.g., installing additional steel angle to close a gap between the ramp edge and the bottom of fence mesh)

Additional work to address non-regulatory changes in agency policy (e.g., change a comfort station heating system from gas to electric)

Improvements to facilitate future maintenance (e.g., changing the location where a piece of equipment will be placed to make maintenance easier in the future)

Budget reallocations usually at no-cost (e.g., schedule changes such as site investigation or analysis originally scheduled to be done early in the contract moved to later time to allow for a different contractor to finish location upgrades)

Value engineering that results in reduced scope or more efficient design, in accordance with existing specifications concerning the sharing of savings from such value engineering

- **Administrative/regulatory changes**

NYC Fire Department (FDNY) regulatory requirements that result in revisions or upgrades to existing standpipes, fire alarm systems, hydrants, pre-combustion gas compressors, or sprinkler systems

Department of Buildings (DOB) regulatory requirements (e.g., DOB code change to enclose a gas meter in a fire-rated closet)

DEP regulatory requirements (e.g., relocation of a fire hydrant in accordance with a new DEP requirement, change of a previously approved copper tubing size during a DEP site visit)

Additions due to Local Law 94 regarding sustainable roofs (e.g., additions or changes to green roofs/solar photovoltaic electric generating system post design)

Public Design Commission (PDC) regulatory requirements resulting in a change in material/structure to match the overall site scheme

DEP action to add bypasses/shut-off valves to avoid interruption of service to local towns in the vicinity of the New York City water supply watershed.

Changes due to utility company requests (e.g., modifications to point of entry or lighting plans)

- **Cost increases with no change in the scope of work**

Increased costs necessary to accelerate a project or keep the project on schedule (other than to make up for contractor-caused delay) (e.g., change orders to pay for evening work and power for lighting during such work)

Increased costs of operation and maintenance of an active construction site

Construction methodology changes such as providing a movable crane versus a contractually-required stationary crane, additional safety signage or visibility strips around the construction work area.



#9: Include Expanded Work Allowance on Capital Approval Standards

- **Issue:** Capital Approval Standards do not currently allow for the use of Expanded Work Allowance, which results in change orders that otherwise could use Expanded Work Allowance going through the longer change order process.

- **Recommendation:** Include Expanded Work Allowance on Capital Approval Standards. Capital Approval Standards already cover a pre-defined, standard, capably eligible scope, and so including Expanded Work Allowance is logical, efficient, and will further increase the utility of the already-streamlined Capital Approval Standards.

#10: Use Expanded Work Allowance on professional service contracts in certain situations

- **Issue:** Some change orders on construction contracts result in change orders for corresponding design and construction manager contracts, which means that even when a construction contract change order is able to use the streamlined Expanded Work Allowance process, the resulting professional service change orders cannot.

- **Recommendation:** Use Expanded Work Allowance on professional service contracts when the original change order results from an Expanded Work Allowance change order on a construction contract.



#11: Service-level agreements governing change orders

- **Issue:** Agencies and vendors currently spend approximately 20 weeks negotiating the precise scope and cost of each change order before agencies submit the change order to OMB and the Comptroller.
- **Recommendation:** Pilot a service level agreement governing change orders with the following timeframes.

Step		Timeframe
1.	Discovery – Issue identified	Day 1
2.	Initial Validation – Agency and Contractor assess issue and agree that the issue will constitute a change order	Up to 1 week
3.	Scoping – Agency and Contractor agree on initial scope and approach; Agency may concurrently assess cost	1-2 weeks
4.	Agency Directive – Agency directs Contractor to submit proposal	No duration; end of scoping period
5.	Proposal – Contractor submits proposal; agency may be concurrently preparing additional cost estimate	2-4 weeks
6.	Agency Review – Agency reviews and accepts change order or initiates negotiations.	1-2 weeks
7.	Negotiations and Final Proposal – If needed, Agency and Contractor review and negotiate, and Contractor submits final proposal	2-3 weeks
Total		7-12 weeks

#12: More efficient processing of certain non-Expanded Work Allowance (EWA) change orders

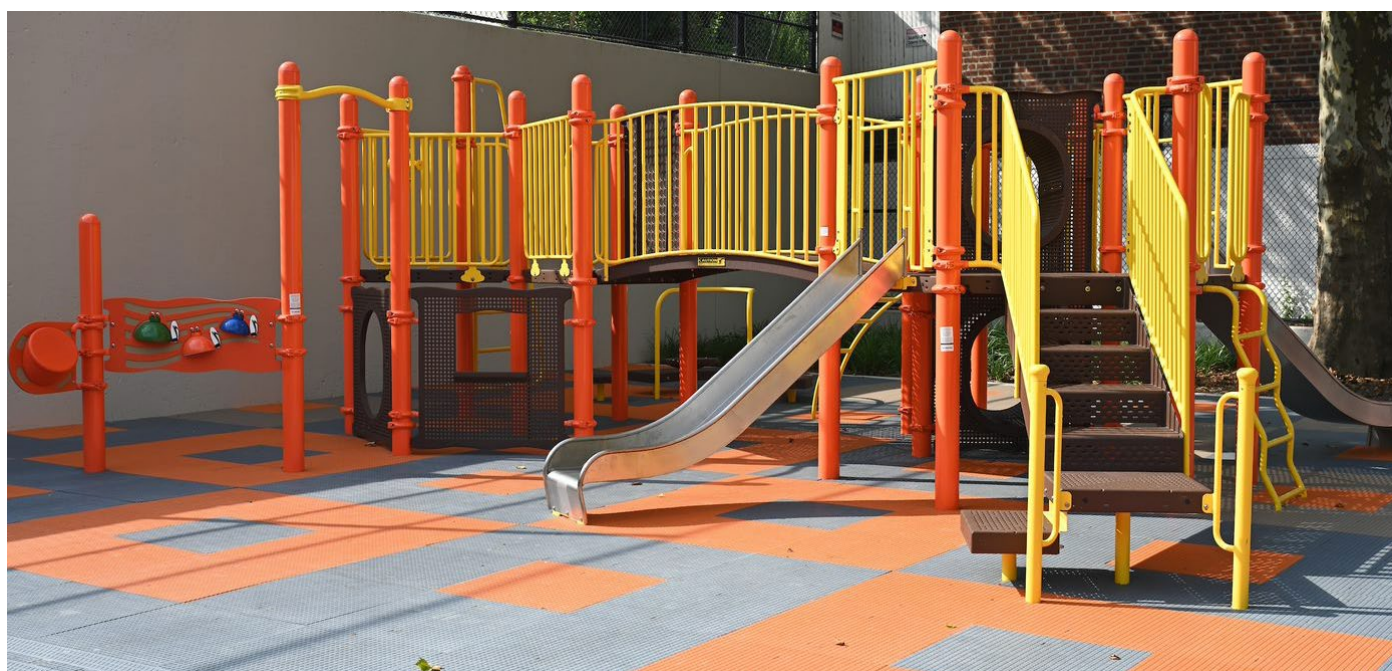
- **Issue:** Agencies are not able to obtain specific funding authorization for completed change orders until the change order negotiation is complete. Because negotiation takes a significant number of weeks and because each step of the regular change order process happens in succession, rather than in parallel, contractors experience significant delays in processing and, as a result, payment, for change orders.
- **Recommendation:** For change orders that remain outside of the EWA process, OMB and the Comptroller's Office will give authorization to fund and register change orders based on eligible scope information and minimum cost, rather than only after negotiation is finalized. Final processing and the related payments for change order work completed to date can then begin in parallel to final negotiation and after registration.

Invoicing and Payment

Contractor payments begin with the contractor submitting to the agency an invoice for the work completed, which the agency then reviews against the contract and construction status. The invoice review process contains essential checks for accuracy and ensures that the City is paying accurately for work completed. However, the current invoice review process can be arduous and result in payment delays. The Task Force recommends three changes to internal payment processes to address these issues.

#13: Streamlined and standardized invoice checklists

- **Issue:** Agencies each have their own invoicing and payment processes, which can be difficult for contractors that work across agencies. Additionally, some invoice requirements may contain unnecessary information that may no longer be necessary to authorize payments.
- **Recommendation:** Create standardized invoice checklists across agencies for different types of contracts. Streamline required information so that only necessary information is requested from the vendor.





#14: Uniform tracking from date of draft invoice

- **Issue:** The City's Procurement Policy Board requires that agencies pay contractors within 30 days of an approved invoice. However, the process to get from the draft invoice to an approved invoice is not uniformly tracked, so there is little data about how long it takes to get from draft invoice to approved.
- **Recommendation:** Agencies begin tracking from the date of the draft invoice so the City can understand the timeline between when a contractor submits a draft and when the invoice is considered approved and recommend changes to improve the payment timeline.

#15: Pilot program tying payment commitment to date of draft invoice

- **Issue:** Once an invoice is deemed approved and the 30-day clock starts to issue payment, agencies have considerable urgency to meet the payment deadline. However, before the 30-day clock starts, there are not clear, consistent expectations regarding the timeframe.
- **Recommendation:** Once agencies begin tracking from the date of draft invoice, one agency will pilot a commitment to paying within a certain number of days of the draft invoice, in addition to the current requirement to pay within 30 days of the approved invoice. If successful, this pilot will be expanded and Procurement Policy Board rules will be created in order to ensure timely agency invoice review and expedited payment and contractor response times.

Libraries and Cultural Institutions

The Task Force met with the three New York City library systems and several cultural institutions that build capital projects with City dollars. While libraries and cultural institutions will benefit from the Task Force's work to improve speed, cost, and quality more generally, the Task Force also learned that libraries and cultural institutions face unique challenges. These challenges are often relatively small but critical issues such as a broken HVAC system or boiler—issues that while not particularly large in cost compared to many City capital projects can sometimes have significant implications for communities, such as the temporary closing of a local library. The Administration's *Rebuild, Renew, Reinvent: A Blueprint for New York City's Economic Recovery* report details an initiative being

advanced by the Department of Cultural Affairs (DCLA) to support small cultural organizations develop scope, budget, and project management strategies for their capital projects. In addition to that initiative, the Task Force developed three new recommendations focused on addressing the particular needs of libraries and cultural institutions.



#16: Advanced Capital Planning

- **Issue:** Libraries and cultural institutions lack access to the portfolio-wide information they need to prioritize needed upgrades and create holistic, long-term capital plans.
- **Recommendation:** Pilot an advanced capital planning database that combines building conditions data from the charter-mandated Asset Information Management System survey, DDC project data including design drawings and as-built drawings, and external GIS-based data sources like FEMA floodplain maps. This data portal will enable better prioritization of resources and strategic long-term planning.

#17: Pilot program for self-management of small projects

- **Issue:** Libraries can register directly with the Comptroller and self-manage limited projects, which works well but is currently limited to specific vehicle and initial outfitting purchases.
- **Recommendation:** The Task Force recommends that each of the three library systems pilot self-managing one project. The City will determine the conditions and draft a legal agreement that delineates the kinds of additional projects eligible for this pilot.

#18: Shorten timeline for equipment purchases

- **Issue:** The process by which (DCLA) helps cultural institutions purchase equipment such as IT systems, performance equipment systems, pianos, and vehicles takes too long.
- **Recommendation:** DCLA will increase the number of staff managing equipment purchases in the capital unit to speed up these projects. DCLA will also bundle equipment purchases, which will be more efficient and attract more bids.

Appendix: Initial Recommendations for Internal Reform





The below recommendations are internal reform items that the Task Force released in its initial reforms in October 2022.

Scoping and planning

• **Initial Recommendation – Capital Project Scope Development (CPSD) Fund**

The CPSD Fund allows agencies to access expense funding to thoroughly evaluate the overall approach, scope, and budget of a complex capital project. The Task Force recommended doubling the use of the CPSD fund from 10 projects to 20 projects per year, which will allow better scoping and budgeting of complex projects before design starts, saving time and reducing risk.

• **Initial Recommendation – Capital Project Coordination Expos**

Elected officials provide funding for capital projects, and it is essential that they receive sufficient upfront information about projects they may fund. The Task Force recommended hosting an expo early in the budget cycle to provide an opportunity for elected officials and City agencies to discuss potential projects and plan for accurate budgeting.

Project Initiation

• **Initial Recommendation – Template and Response Times for the CP Process**

The current CP process involves substantial back-and-forth between City agencies and OMB due to lack of standard templates and information. The Task Force recommended piloting a standardized CP template paired with a service level agreement between OMB and agencies regarding response times. The Task Force anticipates this will cut at least three weeks from the current two- to three-month process.



Procurement

- **Initial Recommendation – Financial Control Board contract review**

The Financial Control Board contract review is triggered by a threshold that has not been updated in 35 years, over which period the City budget has increased by five times. The Task Force recommended a fivefold increase to the threshold to reflect the commensurate increase in the size of the City's budget since 1987.

M/WBEs

- **Initial Recommendation: Project Labor Agreement educational sessions**

M/WBEs are sometimes unfamiliar with managing a project under a Project Labor Agreement (PLA), so the Task Force recommended that the City, the Building and Construction Trades Council of Greater New York, and the Building Trades Employers Association conduct educational information sessions to engage with M/WBEs about PLA requirements.

- **Initial Recommendation: Future Projects and Procurement Document Database**

The Task Force recommended creating a public-facing database of registered contracts and upcoming City projects. This database will be useful for construction companies, especially M/WBEs, to learn more about past City projects and plan for upcoming opportunities.

Project management tools

- **Initial Recommendation – Ombudsperson**

Direct access to a senior agency official is important for contractors, especially subcontractors and M/WBEs who may not have a seamless communication channel through which to obtain

information or resolve disputes. The Task Force recommended designating an existing senior employee at each capital agency to serve as an ombudsperson for contractors throughout the capital process.

- **Initial Recommendation – Early Construction Completion Incentives**

Slippage in project schedules delays project delivery and quickly becomes expensive. The Task Force recommended extending to other agencies a DDC pilot program that offers financial incentives for contractors to meet critical project milestones on a targeted basis. DDC found these incentives to cut two months and 23% of project cost.

- **Initial Recommendation – Price adjustments for fuel, steel, and asphalt**

The Task Force recommended using price adjustment allowances based on New York State Department of Transportation cost index updates to ensure that unexpected price increases do not delay capital projects or increase bid prices.

- **Initial Recommendation – Engineering review to optimize cost effectiveness**

The Task Force recommended allowing contractors to use their technical knowledge to improve outcomes and save money once construction is under way. Using value engineering, DDC saved \$2.6M on an \$114M streetscape reconstruction project, and the Task Force's initial recommendations included expanding this successful tool to the other capital agencies.

- **Initial Recommendation – Coordination with utilities**

The Task Force recommended regular meetings between senior leadership at City Hall and senior utility company executives to coordinate projects and avoid delays.

Change orders

- **Initial Recommendation – Expansion of Expanded Work Allowance for unforeseen field conditions**

DDC piloted using Expanded Work Allowance to address unforeseen field conditions. The Task Force recommended expanding DDC's successful pilot to all capital agencies.

Performance management and public reporting

- Local Law 37 of 2020, sponsored by then-Council Member Brad Lander, requires the development of a capital project tracker to increase transparency and accountability to the public. The Task Force is enthusiastic about the ongoing work to create a consolidated, user-friendly capital projects tracker, which will launch in Spring 2023 with rollout of additional features throughout the year.